

## **Working with Other Organisations**

Entering into arrangements to work with other organisations happens frequently. With limited resources organisations may choose to pool their resources or expertise. However while much work can be achieved when community organisations join forces, pitfalls can arise when working with other organisations. With a little thought and prior planning many of these pitfalls can often be avoided.

Why should we write it down?

These are the benefits of entering into a formal relationship (which is set down in a written document) with another organisation: by discussing the project and the nature of the parties' relationship at an early stage the expectations of each party should become clearer and differences of opinion will be brought to light and dealt with. You will also gain some idea as to whether collaboration with the other organisation will actually work; and this formalised relationship (the written document) will guide the parties both generally and in times of disagreement.

It is incorrect to think that 'if we don't write it down, we can't be held responsible'. The courts can and will recognise an oral (verbal) agreement between two organisations as constituting a legally enforceable contract. One of the benefits to writing the agreement down is that you will have clear evidence of what each party agreed.

### **Checklist: Issues to consider before signing an agreement with another organisation**

This checklist sets out some of the important considerations a non-profit organisation should consider before entering into any agreement with another organisation.

### **What kind of agreement should we choose?**

This is a difficult question. There are multiple ways in which a relationship between your organisation and others may be formalised and documented. Some of the 'names' for agreements that are commonly used by non-profit organisations include: Memoranda of Understanding and Joint Venture Agreements.

These terms are often used loosely and interchangeably which adds to the confusion and makes it even more important to clarify what you mean by recording the arrangement in writing.

Which one will be appropriate for your organisation will be heavily dependent on the circumstances of the agreement, the nature of the project or activities, the parties involved and the intention of the parties to create a legally enforceable contract (or not).

However it is important to remember it is not what the agreement is called that determines the relationship between the parties, but the terms of the agreement (what is actually written down) and the intention and actions of the parties. Your organisation should get legal advice to ensure it understands any obligations that will arise under an agreement it intends to sign.

### **Memoranda of Understanding**

#### **What is a Memorandum of Understanding (MOU)?**

A MOU is generally considered 'an agreement to agree' or an agreement to enter into a more specific and comprehensive contract or agreement at a later time after further negotiations.

A MOU will typically establish a framework for the collaboration between the organisations and express the common goals or vision of the parties to the MOU. In general, an MOU will not deal with the specific details of particular projects.

### **When should a MOU be used?**

A MOU will typically be used when organisations wish to co-operate and/or share information with each other allowing each to make the most of the other's specialist skills or knowledge.

For example, XYZ is a non-profit organisation that is set up to help sufferers of a particular disease and their carers. XYZ set up a website about the disease. They are aware of a hospital that has a specialist centre which has published a lot of research about the disease. XYZ approach the hospital about their work. The two organisations agree to promote each other's work on their respective websites and to work towards co-hosting an international researcher to visit. The two organisations write and sign a MOU to formalise the relationship.

In general a MOU is not a legally binding document (see further below) so it is not appropriate to use a MOU if your organisation wants an agreement you can enforce. If you need to rely on the other organisation taking certain actions and/or if your organisation stands to lose money if the other party doesn't act then a MOU is not appropriate – your organisation should enter into a contractual arrangement.

### **What issues will an MOU cover?**

This will depend on the nature of the collaboration you want with another organisation. Typically a MOU document may set out:

- details of the organisations entering into the MOU;
- objectives of the arrangement and goals or expected benefits;
- agreed actions, services areas of support;
- strategies and mechanisms for dealing with common issues;
- the term of the MOU (an agreed start and review date);
- the agreed roles of each organisation;
- the naming of a position in each organisation as a central point of contact for the MOU; and
- a communication plan or dispute resolution statement.

### **What are my obligations under a MOU?**

Your obligations under the MOU will be outlined in the document and may include obligations to:

- share information (which may or may not include confidential information);
- work in co-operation with the other party on particular types of projects;
- actively promote events/activities of the other party;
- refer clients to the other party; and
- jointly host events/seminars/workshops.

### **Is a MOU a legally binding document – like a contract?**

Generally, MOUs are expressed to be not contractually binding. This is because the courts will generally not recognise agreements to enter into contracts, as contracts in their own right. However whether a MOU is binding or not will be highly dependent on the terms of the MOU (that is, on what is set out in writing).

If a MOU is quite detailed and includes a number of important terms (for example, about the exchange of money) it may well be considered a contract in its own right. If the MOU is relatively general and leaves the specifics of particular projects or arrangements for later negotiation between the parties, it is unlikely to be enforceable as a contract against either party.

To help avoid any uncertainty about whether a MOU is legally binding your organisation should make sure the MOU contains a specific statement to the effect that it is not intended to be legally binding.

If your organisation wants to enter into an arrangement that is legally binding on the other party an MOU is not a suitable arrangement. Your organisation should consider entering into a contract with the other party.

## **Joint Venture Agreements**

### **What is a joint venture?**

In legal terms there is no one, settled meaning of the term 'Joint Venture'. Joint ventures are generally created by agreement (a Joint Venture Agreement) between two or more organisations wanting to undertake a project together where, at the end of the project, the organisations will share in the product (or other output) created by the project.

A Joint Venture Agreement is a legally binding agreement which is enforceable against (and by) a party to that agreement just like the terms of any other contract. A joint venture is usually established for a specific project.

A joint venture is different from:

- a merger: community organisations merge when they agree to join forces permanently to become one legal entity. In a joint venture arrangement the organisations remain separate legal entities and combine their resources for a particular (often temporary) project.
- a 'fee-for-service' arrangement: in a fee-for-service arrangement one organisation provides a service or product to the other for a fee. In a joint venture arrangement the organisations agree to work on a project together and then to share in the product or benefits when it is completed.
- a partnership arrangement: although the term 'partnership' is often used loosely in the community sector it has a technical legal meaning. In particular in a partnership the two organisations have joint interests in the project and are jointly and severally liable for the expenses of the project; whereas in a joint venture, the organisations usually have defined interests and are usually liable for their own debts which they incur individually.

### **When is a joint venture agreement appropriate?**

A community organisation may use a joint venture agreement to work with other organisations for the purposes of fundraising, service delivery or advocacy. However given that there is no settled definition of a joint venture and a Joint Venture Agreement may cover many arrangements, we suggest you seek legal advice about whether a joint venture is a suitable arrangement for a particular project you wish to work on with another organisation.

If you are an income tax exempt organisation you may need to seek legal advice before entering into a joint venture arrangement. Depending on the nature of the activities involved becoming a party to a joint venture agreement may jeopardise your income tax exemption status.

### **What are my obligations under a joint venture agreement?**

If, after obtaining advice, you decide that a joint venture arrangement is appropriate for your circumstances, your obligations will arise from two main sources. Firstly, you will have specific obligations under the Joint Venture Agreement itself and secondly, you will have more general obligations towards your joint venture partner(s) arising out of law.

#### **Specific obligations**

A joint venture agreement is a legally binding contract. Your obligations under the joint venture agreement are likely to be relatively clear and mechanical. The joint venture agreement will set out such things as:

- what you will have to contribute to the joint venture initially;
- the acts you will have to perform throughout the duration of the joint venture;
- reporting obligations;
- governance of the joint venture;

- the process that you will need to go through if there is disagreement amongst joint venture parties; and
- what happens at the end of the life of the joint venture.
- These obligations will depend on the particular circumstances of the agreement.

### **General obligations**

Your general obligations towards the other organisation(s) involved in a joint venture may not be as obvious as those included in the joint venture agreement. These obligations can arise from the development of law over time and your special relationship with your joint venture partner.

In certain circumstances obligations that you will owe the other organisations involved in a joint venture can include a duty of loyalty and a duty to account to the other joint venture party for any benefits gained as a result of your position as a joint venturer. You may be required to avoid conflicts of interest with joint venture activities and account for any personal or 'one-sided' gain arising out of your position as a joint venturer, unless the other joint venturer has allowed you to take up a particular opportunity.

These obligations may also be enforced against (or by) you at law.